

November 23, 2002 until December 23, 2002.

Please also find enclosed with this Amendment a Declaration from the inventor, Marcel Henk Andre Jannsens, discussing differences between the subject invention and the teaching of each of the references cited by the Examiner in the Office Action. This Declaration is unsigned but a signed copy will be forwarded in the near future.

In Section 1 of the Office Action, the Examiner objects to the drawings under 37 C.F.R. §1.83(a) indicating the recitation of the first layer of yielding material is separate from the second layer and must be shown. Please find enclosed with this Amendment drawing sheets 1 and 2, wherein the cross-hatching in Figures 1, 2, 4 and 5, circled in red, is made clearer to indicate that first layer 9 is separate from the second layer 10. As previously discussed in the Amendment dated February 19, 2002, in Figures 1, 2, 4 and 5, the cross-hatching of the first layer 9 has a different pattern than the cross-hatching of the second layer 10. This distinction is further supported in the specification on page 3, lines 36-39 and on page 4, lines 1-2, where it is stated in the Summary of the Invention that it can be advantageous to embody the first and/or second layer of yielding material in (an) interrupted manner so as to be able to comply with the regulations of the railway companies and, also, to be able to obtain and improved vibration damping and sound reduction. Approval of these clarifications to the drawings is respectfully requested and, at such a time formal drawings will be provided.

In Section No. 3 of the Office Action, the Examiner rejects claims 8-12 and 14 under 35 U.S.C. §102(b) as being anticipated by the teaching of United States Patent No. 4,775,103 to Ortwein. While the Examiner makes reference to Figures 3 and 4, there is no Figure 4 in the Ortwein patent and as a result the Applicant will assume the Examiner intends to address Figures 2 and 3. The Ortwein patent is directed to elastically mounted rails for vehicle tracks wherein, for example in Figure 3, a rail 21, is supported by a non-compressible base 26 provided

with a channel-like recess for receiving the rail 21. Established elements 22 extend between the sides of the rail 21 and a single elastic layer 25.

The subject invention is directed to a rail track comprising at least one rail supported by a non-compressible concrete base, wherein the base is provided with the channel-like recess for receiving the rail. There is a first layer of yielding material at the bottom of the channel-like recess which along the entire surface of the first layer contacts the recess bottom. Additionally, each rail side surface is completely covered with a second layer of yielding material within the bounds of the recess. The stiffness provided in a horizontal directed by the second layer on each side surface is greater than the stiffness provided in the vertical direction by the first layer.

In the rail assembly of the Ortwein patent, the elastic layer 25 does not contact the recess bottom along the entire surface of the first layer. Furthermore, the rail side surface of the rail in the Ortwein patent is not completely covered with the elastic layer 25. The established elements 22 are covered with the elastic layer 25. These are clear structural differences between the subject invention as found in amended claim 8 and the teaching of the Ortwein patent. Therefore, claim 8, as amended, is not believed to be anticipated by the teaching of the Ortwein patent. Furthermore, the Applicant does not believe that claim 8, as amended, is made obvious by the teaching of the Ortwein patent because there is no suggestion in the Ortwein patent to add such elements.

As discussed in Paragraph No. 4 of the Declaration, the established elements discussed in the Ortwein patent actually enlarge the free-sound radiating surface and teach away from a rail assembly to achieve a reduction in the noise production of rail tracks, which as stated on Page 2, lines 25-31 is one goal of the subject invention.

For these reasons, claim 8, as amended, is believed to be patentably distinct over

the teaching of the Ortwein patent. Furthermore, claims 9-12 and 14, by way of their dependence upon what is believed to be patentably distinct independent claim 8, are themselves believed to be patentably distinct.

In Section No. 5 of the Office Action, the Examiner rejects claims 8-12 and 14 under 35 U.S.C. §103(a) as being obvious from the teaching of European Patent Application Publication No. EP 0 771 908 to Tuinenburg (the Tuinenburg application) in view of the teaching of German Patent No. 916,830 to Dortmunder Union (the Dortmunder Union patent). The Examiner cites the Tuinenburg patent application as a document teaching all of the limitations of claims 8-12 and 14, except for a rail track being supported by a concrete base body and having a second layer of yielding material of different stiffness value on each side of the rail. The Examiner then indicates, however, that the Dortmunder Union patent, in Figure 1, discloses a concrete-base body to support a rail track with a second layer of yielding material of different stiffness value on each side of the rail. While the Tuinenburg patent application may disclose the broad concept of a rail supported within a channel and surrounded by sound-absorbing material, the Tuinenburg patent application is directed to a rail construction particularly for a bridge or a viaduct and there is no discussion whatsoever directed to the overall stiffness of the structure, much less a discussion of a different stiffness in a horizontal or vertical direction. The Examiner also indicates that the teaching of the Dortmunder Union patent, in Figure 1, discloses such a difference in stiffness. There is nothing in the Dortmunder Union patent to support teaching a greater stiffness in a horizontal direction than in the vertical direction or, furthermore, to support the existence of separate materials at the base of the rail and at the side of the rail. As indicated in Paragraph No. 6 of the Declaration submitted by the inventor, the stiffness of the rail arrangement in the Dortmunder Union patent in the horizontal direction is less than the stiffness in the vertical direction. For these reasons, the Applicant does not believe that claim 8, as

amended, is made obvious by the teaching of the Tuinenburg patent application in view of the teaching of the Dortmunder Union patent and, for that reason, claim 8 is believed to be patentably distinct over these references. Furthermore, claims 9-12 and 14, by way of their dependence upon what is believed to be patentably distinct independent claim 8, are themselves believed to be patentably distinct.

In Section B.1. on page 4 of the Office Action, the Examiner indicates that the drawings do not provide a clear indication that materials 9 and 10 are separate. Please note, as previously discussed, that drawing sheets 1 and 2 have been clarified such that the difference in cross-hatching is more apparent.

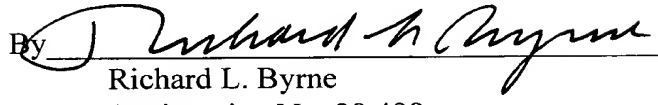
In Section B.2. of the Office Action, the Examiner indicates that it is factual and accurate that all of the references of record considered teach the limitation of second yielding material in horizontal configuration being greater than that of first yielding material at the bottom of the rail. The Applicant respectfully disagrees with this conclusion and each reference cited by the Examiner has been individually analyzed and discussed to arrive at a different conclusion. For that reason, the Applicant believes to the contrary that the references cited indicate a stiffness greater in the vertical direction than in the horizontal direction.

Finally, in Section B.3. of the Office Action, the Examiner alleges that the Ortwein patent does, in fact, disclose a first layer of yielding material that is separate from a second layer of yielding material supporting the rail in Figures 3 and 4. As mentioned before, the Applicant believes that this reference should properly be to Figures 2 and 3. Nevertheless, the distinction between the subject invention and the teaching of the Ortwein patent has been previously discussed in this Amendment.

Reconsideration of the rejections and allowance of claims 8-12 and 14 are respectfully requested.

Respectfully submitted,

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VERSION WITH MARKED-UP CHANGES OF CLAIM 8

8. (Four times ~~Thrice~~-Amended) A rail track comprising at least one rail supported by a non-compressible, concrete base body, with the base body provided with a channel-like recess for receiving the rail such that a running surface of a head of the received rail lies free, with a bottom of the channel-like recess provided with a first layer of yielding material, wherein along its entire surface the first layer contacts the recess bottom and~~which~~ extends under a bearing surface of a foot at the bottom of the rail, with rail side surfaces between the running surface and the bearing surface of the rail, wherein each rail side surface is completely covered with a second layer of yielding material within the bounds of the recess, wherein stiffness provided in the horizontal direction by the second layer on each side surface is greater than stiffness provided in the vertical direction by the first layer, wherein the bottom of the channel-like recess fully supports the rail ~~and the side walls of the channel-like recess are parallel~~ and wherein the first layer of yielding material and each of the second layers of yielding material are physically separate from one another.